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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/671,081	09/25/2003	Janani Janakiraman	AUS920030585US1	6289

45993 7590 07/27/2007
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EXAMINER

THERIAULT, STEVEN B

ART UNIT	PAPER NUMBER
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2179

MAIL DATE	DELIVERY MODE
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07/27/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/671,081	Applicant(s) JANAKIRAMAN ET AL.	
	Examiner Steven B. Theriault	Art Unit 2179	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 April 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-16 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

1. This action is responsive to the following communications: Arguments filed 04/24/2007.

This action is made Final.

2. Claims 1 -16 are pending in the case. Claims 1, 6, and 11 are the independent claims.

Specification

3. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Claims 6 – 10 claim a "**computer readable media**" encoded with software, but does not provide proper antecedent basis for the claimed subject matter.

Applicant argues that a "computer readable media " is a known term in the art and therefore from the specification one of ordinary skill would know what a computer readable media is.

Applicant argues that the Examiner objection to the specification should be withdrawn because one of ordinary skill in the art would know what a computer readable medium is and that the term is well recognized in the art (See arguments page 8). While the term is known in the art, the cited sections (Para 0037 and 0038) do not mention the term computer readable medium and there is no antecedent basis for the claim terminology in the specification.

MPEP 608.01(o) states the following:

608.01 (o)[R-3] Basis for Claim Terminology in Description

The meaning of every term used in any of the claims should be apparent from the descriptive portion of the specification with clear disclosure as to its import; and in mechanical cases, it should be identified in the descriptive portion of the specification by reference to the drawing, designating the part or parts therein to which the term applies.

A term used in the claims may be given a special meaning in the description. **>See

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MPEP § 2111.01 and § 2173.05(a). <Usually the terminology of the original claims follows the nomenclature of the specification, but sometimes in amending the claims or in adding new claims, new terms are introduced that do not appear in the specification. The use of a confusing variety of terms for the same thing should not be permitted. New claims and amendments to the claims already in the application should be scrutinized not only for new matter but also for new terminology. While an applicant is not limited to the nomenclature used in the application as filed, he or she should make appropriate amendment of the specification whenever this nomenclature is departed from by amendment of the claims so as to have clear support or antecedent basis in the specification for the new terms appearing in the claims. **This is necessary in order to insure certainty in construing the claims in the light of the specification, Ex parte Kotler, 1901 C.D. 62, 95 O.G. 2684 (Comm'r Pat. 1901). See 37 CFR 1.75, MPEP §608.01(i) and § 1302.01.**

Note that examiners should ensure that the terms and phrases used in claims presented late in prosecution of the application (including claims amended via an examiner's amendment) find clear support or antecedent basis in the description so that the meaning of the terms in the claims may be ascertainable by reference to the description, see 37 CFR 1.75(d)(1). If the examiner determines that the claims presented late in prosecution do not comply with 37 CFR 1.75(d)(1), applicant will be required to make appropriate amendment to the description to provide clear support or antecedent basis for the terms appearing in the claims provided no new matter is introduced. The specification should be objected to if it does not provide proper antecedent basis for the claims by using form paragraph 7.44

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said

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subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 1 – 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Said et al. (Publication No. 2004/0143430) in view of Kredo et al. (Patent No. 6,876,728).

As to independent claim 1, Said et al. teaches a computer-implemented method of communicating (see e.g., Para. [0003], line 7; i.e., Instant Messenger (IM) is used for communication on a computer or portable device) emotional aspects (see e.g., para. [0014]; i.e., keystrokes, pull-down menus, voice commands, special gestures, handwritten symbols are used to indicate emotional content) associated with a communication session from a first person to a second person (see para. [0012], lines 7 – 9; i.e., Instant Messenger (IM) software is used between two people interacting in real time over the Internet), wherein the method comprises the steps of receiving one or more emotional characteristic indicators (see e.g., [0029], lines 5 – 8; i.e., emoticons, such as smiley-faces, indicating happiness or laughter, are used in instant messaging situation, wherein instant messaging programs comprises sending a message from a first person to a second person) from at least one emotional content analyzer system (see e.g., para. [0020]; i.e., the emotional content analyzer corresponds to using cameras, moving lights, instrumented gloves, styli, position trackers, etc. to analyze and recognize gestures and sign language) as the result of at least one emotional content analysis (see e.g., para. [0033]; i.e., Virtual Sign Language (vSL) is a method of analyzing physical gestures or sign languages

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inputted by a user, wherein the output can be modeled by a computer-generated human model expressing emotional content, such as frowning or smiling on the virtual computer-generated human model) performed on said communication session from said first person (see e.g., para. [0003], lines 1 – 8; i.e., DEAF-core technology can be used in conjunction with Instant Messenger (IM) software, wherein Instant Messenger programs are used for communication between one or more people), determining an overall emotional state for said first person (see e.g., para. [0033], lines 6 – 16; i.e., when using Virtual Sign Language (vSL) during a communication session, basic animation are strung together in a complete video clip of an emoticon or a computer generated person to represent the overall emotional state of the first person), generating one or more electronic symbols representing said overall emotion (see e.g., para. [0033], lines 6 – 16; i.e., the generated emoticon or computer-generated person, accompanied by facial aspects, such as frowning or smiling, will represent the overall emotional aspects of the first person), said electronic symbols being interpretable by said second person (see e.g., para. [0033], lines 1 – 3; i.e., the second person corresponds to the person receiving the output in an instant messaging session), and presenting (see e.g., para. [0013]; i.e., DEAF-core technology converts inputted data into recognizable information for a person with disabilities, such as displaying emoticons, computer-generated human model, etc. on a monitor) said electronic symbols to said second person in association with said communication session (see para. [0003], lines 1 – 8 and para. [0033]; i.e., the electronic symbol corresponds to the animated emoticon/avatar and computer-generated human model during an instant messaging session). Said et al. does not specifically mention a method to identify a first and second person. Kredo et al. teaches identifying a first and second person (see e.g., col. 5, lines 6 – 14 and col. 5, lines 28 – 35; i.e., identifying a first and second person corresponds to a profile used to govern communication between user A and user B, wherein the profile includes type of personality, nationality, ethnicity, emotion, etc.). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the computer-implemented method of communicating emotional aspects associated with a communication session from a first person to a second person of Said et al. with identifying

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a first and second person of Kredo et al. because the profile associated with the specific user is used to govern communications between other users, wherein the profile has a plurality of options to express the users emotions (see e.g., Fig. 2 – 4 and col. 5, lines 9 – 12).

As to dependent claim 2, this claim is analyzed with respect to claim 1 as previously discussed above. Said et al. teaches computer-implemented method of receiving results of at least one emotional content analysis (see e.g., para. [0020], line 1; i.e., receiving at least one emotional content analysis corresponds to a Sign Language Recognition (SLR) system used for analyzing gestures and sign language) comprises receiving the results of a process selected from the group of a hand gesture recognizer (see e.g., para. [0020]; i.e., Sign Language Recognition (SLR) is used to analyze and recognize gestures and sign language for further conversion of emotional characteristics to be integrated with avatars, emoticons, or computer-generated human model), a body movement recognizer (see e.g., para. [0020]), a voice pitch analyzer (see e.g., para. [0022], lines 13 – 18; i.e., American Speech Recognition (ASR) is used to analyze and recognize a users voice volume), and a facial expression recognizer (see e.g., para. [0017], lines 1 – 4; i.e., Galvanic Skin Response (GSR) is a form of biofeedback recognition used to process facial movements and characteristics).

As to dependent claim 3, this claim is analyzed with respect to claim 1 as previously discussed above. Said et al. teaches determining an overall emotional state of a user (see e.g., para. [0033], lines 6 – 16; i.e., the overall emotion and expression of a user can be basic units of animation, which are strung together into a complete animated emoticon, avatar, computer-generated human model, that can visually express the user's emotions). Said et al. does not specifically mention identifying a first person, comprising accessing an electronic cultural profile for said first person to assist in determining said overall emotional state. Kredo et al. teaches identifying a first person (see e.g., col. 4, lines 51 – 57; i.e., a profile is established by an individual user to facilitate instant messaging), comprising accessing an electronic cultural profile (see e.g., Fig. 2 – 4 and col. 5, lines 28 – 42; the cultural profile corresponds to the user establishing a user profile, which may include volume for conveying a message, personality, nationality, ethnicity, emotion, etc.) for

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said first person to assist in determining said overall emotional state (see e.g., col. 5, lines 50 – 64; i.e., the profile established by the user will be used as a predefined profile for determining the overall emotional state of a user). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate determining the overall emotional state of a user of Said et al. with identifying a first person, comprising accessing an electronic cultural profile for said first person to assist in determining said overall emotional state of Kredo et al. because the profile established to determine the overall emotional state of a user can output related emoticon in the same color (see e.g., para. Col. 5, lines 65 – 67 and col. 6, lines 1 – 15; i.e., the profile could define all sadness related text to be provided in the color blue, or all angry emotions to be portrayed in red, wherein the color of the emoticons allow the recipients of the message to easily recognize the characteristics associated with the sender).

As to dependent claim 4, this claim is analyzed with respect to claim 1 as previously discussed above. Said et al. teaches determining an overall emotional state of a user (see e.g., para. [0033], lines 6 – 16; i.e., the overall emotion and expression of a user can be basic units of animation, which are strung together into a complete animated emoticon, avatar, computer-generated human model, that can visually express the user's emotions). Said et al. does not specifically mention identifying a second person, comprising accessing an electronic cultural profile for said second person to assist in determining appropriate electronic symbols to accurately represent the overall emotional state of said first to said second person. Kredo et al. teaches identifying a second person (see e.g., col. 1, lines 25 – 37 and col. 4, lines 51 – 57; i.e., a buddy list is a list of contacts that is associated with the user, wherein each user on a buddy list has a unique user ID and user profile to distinguish one user from another), comprising accessing an electronic cultural profile (see e.g., Fig. 2 – 4; i.e., phase selection profile corresponds to the electronic cultural profile) for said second person to assist in determining appropriate electronic symbols to accurately represent the overall emotional state of said first to said second person (see e.g., col. 5, lines 43 – 54; i.e., a predefined profile is used to determine the appropriate electronic symbol to represent the overall emotional state). Therefore, it would have been obvious to one of ordinary

skill in the art at the time the invention was made to incorporate determining the overall emotional state of a user of Said et al. with identifying a second person, comprising accessing an electronic cultural profile for said second person to assist in determining appropriate electronic symbols to accurately represent the overall emotional state of said first to said second person of Kredo et al. because the profile established to determine the overall emotional state of a user can output related emoticon in the same color (see e.g., para. Col. 5, lines 65 – 67 and col. 6, lines 1 – 15; i.e., the profile could define all sadness related text to be provided in the color blue, or all angry emotions to be portrayed in red, wherein the color of the emoticons allow the recipients of the message to easily recognize the characteristics associated with the sender).

As to dependent claim 5, this claim is analyzed with respect to claim 1 as previously discussed above. Said et al. teaches generating one or more electronic symbols corresponding to said overall emotional state (see e.g., para. [0033], lines 8 – 16; i.e., the electronic symbol corresponds to animated emoticons (visiemes) or a computer-generated human model, in which both methods display overall emotional characteristics, such a frowning or smiling), comprising a graphical emoticon (see e.g., para. [0033], lines 6 – 10; i.e., animated avatar and computer-generated human model), text highlighting methods (see e.g., 19 – 20; text display includes highlighting), text underlining methods (those skilled in the art would appreciate document processing techniques inherently include text modification methods, such as underlining text), bolding methods (see e.g., para. [0029], lines 3 – 5; i.e., the text during the rendering of the output can be bolded), one or more signals for a Telephone Terminal for the Deaf system (see e.g., para. [0033], lines 1 – 3; i.e., Virtual Sign Language (vSL) is used for non-text visual output, such as gestures and sign language), and a Braille code (see e.g., para. [0027] and para. [0031]; i.e., electronic Braille (eBRL) corresponds to computer instructions that vibrate a series of small pins in real-time). Said et al. does not specifically mention a list of text-based emoticon. Kredo et al. teaches a list of text-based emoticons (see e.g., Fig. 4; i.e., the phase selection profile is used to select from a list of text-based emoticons that is associated with particular text). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to

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incorporate generating one or more electronic symbols corresponding to said overall emotional state, comprising a graphical emoticon, text highlighting methods, text underlining methods, bolding methods, one or more signals for a Telephone Terminal for the Deaf system, and a Braille code of Said et al. with a list of text-based emoticons because the profile established to determine the overall emotional state of a user can output related emoticon in the same color (see e.g., para. Col. 5, lines 65 – 67 and col. 6, lines 1 – 15; i.e., the profile could define all sadness related text to be provided in the color blue, or all angry emotions to be portrayed in red, wherein the color of the emoticons allow the recipients of the message to easily recognize the characteristics associated with the sender).

As to independent claim 6, claim 6 differs from claim 1 only in that claim 6 is an article of manufacture apparatus claiming a computer readable media suitable for storing computer programs; and one or more computer programs stored by said computer readable media, (see e.g., para. [0048], lines 1 – 4; i.e., a server-based distributed model is used to deliver information to the client device, wherein the client downloads the information from a central server) containing executable instructions (see e.g., para. [0050], lines 4 – 9; i.e., executable instructions corresponds to DEAF-core software) that when executed causes a processor (see e.g., para. [0049], lines 4 – 8; i.e., the processor of a cell phone is sued to execute the computer instructions obtained from the server) to perform the step/method of claim 1. Thus, claim 6 is analyzed as previously discussed with respect to claim 1 above.

As to dependent claim 7, claim 7 differs from claim 2 only in that claim 7 is an article of manufacture claiming a computer readable media (see e.g., para. [0048], lines 1 – 4; i.e., a server-based distributed model is used to deliver information to the client device, wherein the client downloads the information from a central server) containing executable instructions (see e.g., para. [0050], lines 4 – 9; i.e., executable instructions corresponds to DEAF-core software) that when executed causes a processor (see e.g., para. [0049], lines 4 – 8; i.e., the processor of a cell phone is sued to execute the computer instructions obtained from the server) to perform the

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step/method of claim 2. Thus, claim 7 is analyzed as previously discussed with respect to claim 2 above.

As to dependent claim 8, claim 8 differs from claim 3 only in that claim 8 is an article of manufacture claiming a computer readable media (see e.g., para. [0048], lines 1 – 4; i.e., a server-based distributed model is used to deliver information to the client device, wherein the client downloads the information from a central server) containing executable instructions (see e.g., para. [0050], lines 4 – 9; i.e., executable instructions corresponds to DEAF-core software) that when executed causes a processor (see e.g., para. [0049], lines 4 – 8; i.e., the processor of a cell phone is sued to execute the computer instructions obtained from the server) to perform the step/method of claim 3. Thus, claim 8 is analyzed as previously discussed with respect to claim 3 above.

As to dependent claim 9, claim 9 differs from claim 4 only in that claim 9 is an article of manufacture claiming a computer readable media (see e.g., para. [0048], lines 1 – 4; i.e., a server-based distributed model is used to deliver information to the client device, wherein the client downloads the information from a central server) containing executable instructions (see e.g., para. [0050], lines 4 – 9; i.e., executable instructions corresponds to DEAF-core software) that when executed causes a processor (see e.g., para. [0049], lines 4 – 8; i.e., the processor of a cell phone is sued to execute the computer instructions obtained from the server) to perform the step/method of claim 4. Thus, claim 9 is analyzed as previously discussed with respect to claim 4 above.

As to dependent claim 10, claim 10 differs from claim 5 only in that claim 10 is an article of manufacture claiming a computer readable media (see e.g., para. [0048], lines 1 – 4; i.e., a server-based distributed model is used to deliver information to the client device, wherein the client downloads the information from a central server) containing executable instructions (see e.g., para. [0050], lines 4 – 9; i.e., executable instructions corresponds to DEAF-core software) that when executed causes a processor (see e.g., para. [0049], lines 4 – 8; i.e., the processor of a cell phone is sued to execute the computer instructions obtained from the server) to perform the

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step/method of claim 5. Thus, claim 10 is analyzed as previously discussed with respect to claim 5 above.

As to independent claim 11, Said et al. teaches a system for communicating (see e.g., para. [0003], line 7; i.e., Instant Messenger (IM) is used for communication on a computer or portable device) emotional aspects (see e.g., para. [0014]; i.e., keystrokes, pull-down menus, voice commands, special gestures, handwritten symbols are used to indicate emotional content) of a communication session from a first person to a second person (see para. [0012], lines 7 – 9; i.e., Instant Messenger (IM) software is used between two people interacting in real time over the Internet), wherein the system comprises a recognizer (see e.g., para. [0033], lines 1 – 3; i.e., the system corresponds to the DEAF-core system which comprises a recognizer, wherein the recognizer corresponds to Virtual Sign Language (vSL)) input configured to receive results of at least one emotional content analyzer performed on said first person (see e.g., para. [0033]; i.e., DEAF-core system incorporating instant messaging and Virtual Sign Language (vSL), analyzes and recognizes gestures and sign language of a user), a symbol generator adapted to generate one or more symbols representing said overall emotion (see e.g., para. [0033], lines 8 – 16; i.e., Virtual Sign Language (vSL) analyzes the users gestures, wherein an animated avatar or computer-generated human model is used to represent the users overall emotions, such as frowning or smiling), said symbols being suitable for interpretation by said second person (see e.g., para. [0033], lines 1 – 3; i.e., Virtual Sign Language is useful for people to see gestures and other non-text visual output, wherein DEAF-core technology is used in conjunction with instant messaging software that enables a plurality of users to interact in real time), and a symbol merger (see e.g., para. [0029] and para. [0033], lines 13 – 16, lines 5 – 8; i.e., DEAF-core merges text and emoticons in an instant messaging situation, wherein American Sign Language (ASL) can be merged with Virtual Sign Language (vSL) to provide synchronization) for merging said generated symbols with said communication session (see e.g., para. [0028]; i.e., DEAF-core technology is implemented with instant messaging software, such as Accessible Instant Messenger which corresponds to a communication session) for presentation to said second person (see e.g., para.

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[0013]; i.e., DEAF-core technology converts inputted data into recognizable information for a person with disabilities, such as displaying emoticons, computer-generated human model, etc. on a monitor). Said et al. does not specifically mention a set of user ID's configured to identify a first person and a second person, an emotional state analyzer adapted to determine an overall emotional state for said first person relative to said first person's identity. Kredo et al. teaches a set of user ID's configured to identify a first person and second person (see e.g., col. 1, lines 25 – 37; i.e., a buddy list is a list of contacts that is associated with the user, wherein each user on a buddy list has a unique user ID and user profile to distinguish one user from another), and an emotional state analyzer adapted to determine an overall emotional state for said first person relative to said first person's identity (see e.g., Fig. 2 – 4 and col. 5, lines 55 – 64; i.e., the meaning of “hi” is associated with an emotional value of sadness, wherein the emotion is predefined in the users profile). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the system for communicating emotional aspects of a communication session from a first person to a second person of Said et al. with the set of user ID's configured to identify a first person and second person, and an emotional state analyzer adapted to determine an overall emotional state for said first person relative to said first person's identity of Kredo et al. because the profile associated with the specific user is used to govern communications between other users, wherein the profile has a plurality of options to express the users emotions (see e.g., Fig. 2 – 4 and col. 5, lines 9 – 12).

As to dependent claim 12, claim 12 incorporates substantially similar subject matter as claimed in claim 7 above, and are respectfully rejected along the same rationale.

As to dependent claim 13, claim 13 incorporates substantially similar subject matter as claimed in claim 8 above, and are respectfully rejected along the same rationale.

As to dependent claim 14, claim 14 incorporates substantially similar subject matter as claimed in claim 9 above, and are respectfully rejected along the same rationale.

As to dependent claim 15, claim 15 incorporates substantially similar subject matter as claimed in claim 10 above, and are respectfully rejected along the same rationale.

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As to dependent claim 16, this claim is analyzed with respect to claim 1 as previously discussed above. Said et al teaches a symbol merger (see e.g., para. [0029] and para. [0033], lines 13 – 16, lines 5 – 8; i.e., DEAF-core merges text and emoticons in an instant messaging situation, wherein American Sign Language (ASL) can also be merged with a plurality of communication session, including Virtual Sign Language (vSL) to provide synchronization) is adapted to merge a communication session selected from the group of electronic mail message (see e.g., para. [0012], lines 4 – 5; i.e., e-mail), an online text chat (see e.g., para. [0012], line 5; i.e., instant messenger (IM) software), video conference (see e.g., para. [0033]), a online classroom, a captioned television broadcast, a multimedia presentation, and an open captioned meeting.

Response to Arguments

4. Applicant's arguments filed 04/24/2007 have been fully considered but they are not persuasive.

Applicant argues the following:

A proper prima facie case of obviousness has not been established because (a) it has not been established that one of ordinary skill in the art would have had access to the disclosures of Said and Kredo simultaneously at the time applicants' invention was made and thus would not have been enabled to make the proposed combination, and (b) it has not been established that Said is prior art (See arguments page 9, bottom).

The Applicant has also argued extensively on the meaning of one of ordinary skill in the art.

It is noted that the Applicant has not chosen to argue the action on the merits of the claims and has only chosen to argue the priority date of the prior art. Therefore, the Examiner will only focus on the arguments presented.

The Examiner disagrees with the assessment with the Applicant regarding the priority date of the Said et al reference and whether or not one of ordinary skill in the art at the time of the invention would have combined Said with the Kredo reference.

Contrary to the applicants assertions, 35 USC 119(e) specifically states "*that the critical reference date for a U.S. patent publication entitled to the benefit of the filing date of a provisional application under 35 USC 119 (e) is the filing date of the provisional application with certain*

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exceptions >1) If the provisional application properly supports the subject matter relied upon to make the rejection in compliance with 35 USC 112" (See also 706.02(f)(1) Example 2).

Additionally, MPEP 2136.02 specifically states:

III. THE SUPREME COURT HAS AUTHORIZED 35 U.S.C. 103 REJECTIONS BASED ON 35 U.S.C. 102(e)

U.S. patents may be used as of their filing dates to show that the claimed subject matter is anticipated or obvious. Obviousness can be shown by combining other prior art with the U.S. patent reference in a 35 U.S.C. 103 rejection. *Hazeltine Research v. Brenner*, 382 U.S. 252, 147 USPQ 429 (1965). **Similarly, certain U.S. application publications and certain international application publications may also be used as of their earliest effective U.S. filing dates (which will include certain international filing dates) to show that the claimed subject matter would have been anticipated or obvious.**

Therefore, based on the analysis of the Said publication the earliest effective date is Oct. 15, 2002 and the reference would be available under 102(e) as applied in a 103(a) rejection. In support of 35 USC 119(e), the question then becomes whether or not the support is provided in the provisional application for the subject matter in the reference used in the rejection. The Examiner relied on the teachings of the Said et al. reference and has pointed to specific sections of the published reference that teach the claim language. The Examiner did not refer to any sections of the provisional application in the rejection. However, the provisional application provides the support to one of ordinary skill in the art as shown on page 10, where an instant messenger interface is shown that provides emoticons (Symbol) to persons with disabilities for the purposes of communicating emotion to the second person via a chat interface. The general user can see from the picture in the provisional application, without an in-depth expert analysis, showing the support for the subject matter in the Said reference used in the rejection. Therefore, based on well established guidelines in the MPEP the examiner believes the interpretation of 35

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USC 119(e) as stating that the Said et al reference has an effective filing date of Oct. 15, 2002 which predates the applicant filing date and qualifies for 103(a) and 102(e).

Moreover, the inventors listed in the Said reference have published information on their corporate website regarding the ability for persons with handicaps to communicate in the same manner as those that are not handicapped, which may have been known to one of ordinary skill in the art at the time of the invention regarding assistive technology applications. In performing a quick search of the Wayback machine, the Examiner has found numerous archived dates of information discussing products for sale in the disabilities marketplace prior to the filing date of the present application (See http://web.archive.org/web/*/http://www.ghbraille.com). The Wayback machine's URL available on the Internet is <http://web.archive.org>.

The Examiner is not quite sure as to why the provisional application would not be available to the public via the PAIR system. In performing a quick search of the public Pair portal on the www.uspto.gov website under the PAIR menu the Examiner was able to find the provisional application and its contents located here <http://portal.uspto.gov/external/portal/pair> after entering the provisional application number.

Finally, the applicant has requested that a copy of the provisional application be sent to the applicant. The MPEP states the following:

In June 2004, the USPTO ceased mailing paper copies of cited U.S. patents and U.S. patent application publications with all Office actions. See "USPTO to Provide Electronic Access to Cited U.S. Patent References with Office Actions and Cease Supplying Paper Copies," 1282 O.G. 109 (May 18, 2004). Foreign patent documents and non-patent literature will continue to be provided to the applicant on paper.

All U.S. patents and U.S. patent application publications are available free of charge from the USPTO web site (www.uspto.gov/patft/index.html), for a fee from the Office of Public Records (<http://ebiz1.uspto.gov/oems25p/index.html>), and from commercial sources. Copies are also available at the Patent and Trademark Depository Libraries (PTDLs). A list of the PTDLs may be found on the USPTO web site (www.uspto.gov/web/offices/ac/ido/ptdl/ptdlib_1.html). Additionally, a new feature in the Office's Private Patent Application Information Retrieval system (PAIR), E-Patent Reference, is available for downloading and printing of U.S. patents and U.S. patent application publications cited in U.S. Office Actions.

STEPS TO USE THE E-PATENT REFERENCE FEATURE

Access to Private PAIR is required to utilize E-Patent Reference. If you do not already have access to Private PAIR, the Office urges practitioners and applicants not represented by a practitioner to: (1) obtain a no-cost USPTO Public Key Infrastructure (PKI) digital certificate; (2) obtain a USPTO customer number; (3) associate all of their pending and new application filings with their customer number; (4) install free software (supplied by the Office) required to access Private PAIR and the E-Patent Reference; and (5) make appropriate arrangements for Internet access.

Instructions for performing the 5 steps:

Step 1: Full instructions for obtaining a PKI digital certificate are available at the Office's Electronic Business Center (EBC) web page (www.uspto.gov/ebc/downloads.html). Note that a notarized signature will be required to obtain a digital certificate.

Step 2: To get a Customer Number, download and complete the Customer Number Request form, PTO-SB/125, from the USPTO web site (www.uspto.gov/web/forms/sb0125.pdf). The completed form can be transmitted by facsimile to the Patent Electronic Business Center at (571) 273-0177, or mailed to the address on the form. If you are a registered attorney or agent, your registration number must be associated with your customer number. This association is accomplished by adding your registration number to the Customer Number Request form.

Step 3: A description of associating a customer number with the correspondence address of an application is described at the EBC Web page (www.uspto.gov/ebc/registration_pair.html).

Step 4: The software for electronic filing is available for downloading at www.uspto.gov/ebc. Users can also contact the EFS Help Desk at (571) 272-4100 and request a copy of the software on compact disc. Users will also need Adobe Acrobat Reader, which is available through a link from the USPTO web site.

Step 5: Internet access will be required which applicants may obtain through a supplier of their own choice. As images of large documents must be downloaded, high-speed Internet access is recommended.

The E-Patent Reference feature is accessed using a button on the Private PAIR screen. Ordinarily all of the cited U.S. patent and U.S. patent application publication references will be available over the Internet using the Office's new E-Patent Reference feature. The size of the references to be downloaded will be displayed by E-Patent Reference so the download time can be estimated. Applicants and registered practitioners can select to download all of the references or any combination of cited references. Selected references will be downloaded as complete documents in Portable Document Format (PDF). The downloaded documents can be viewed and printed using commercially available software, such as ADOBE® READER®. ADOBE® READER® is available free of charge from Adobe Systems Incorporated (www.adobe.com/products/acrobat/readmain.html).

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Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Prior art Publication No. 2004/0179039 can be applicable and pertinent to applicant's disclosure. Prior art disclosed by Blattner et al. teaches communicating with a first and second person through the use of a messaging system utilizing animated avatars, and text based avatars.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven B. Theriault whose telephone number is (571) 272-5867. The examiner can normally be reached on M, W, F 10:00AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (571) 272-4847. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SBT



WEILUN LO
SUPERVISORY PATENT EXAMINER